

WILLIAM J. SMITH, SR., ET AL.

IBLA 77-498

Decided November 25, 1977

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring appellants' mining claims null and void ab initio. OR 17438 through OR 17451.

Affirmed.

1. Mining Claims: Generally -- Public Records -- Withdrawals and Reservations: Effect of

Land is segregated from entry under the mining laws when a proposed withdrawal of the lands from mineral entry is noted on the official records of the Bureau of Land Management and a mining claim located after that time is null and void ab initio.

2. Mining Claims: Generally -- Withdrawals and Reservations: Effect of

The segregative effect of an application by a federal agency for withdrawal of land from mineral entry is not affected by the provision in the published proposal that further hearings and investigations may be held.

3. Federal Employees and Officers: Authority to Bind Government -- Mining Claims: Generally -- Withdrawals and Reservations: Generally

The authority of the government to proceed with the withdrawal of public lands, after a federal agency has filed an application for such action, which withdraws that land from mineral location, will not be barred by laches because of lapse of time.

4. Withdrawals and Reservations: Generally -- Withdrawals and Reservations: Effect of

Once public land is segregated from mineral entry by notation on the official records of the BLM, objection to the merits of the withdrawal will not vitiate the effect of the withdrawal with respect to the appropriation of the land.

APPEARANCES: W. Dean Fitzwater, Esq., Fitzwater and Fitzwater, Portland, Oregon, for appellants.

OPINION BY ADMINISTRATIVE JUDGE RITVO

William J. Smith, Sr., et al. 1/ appeal from the July 6, 1977, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring their various Blue Mountain Placer mining claims 2/ null and void ab initio in part insofar as they were located on land not subject to mineral entry at the time of location. The claims were located on various dates between October 16, 1974, and October 28, 1974.

On August 3, 1973, the Department of Agriculture filed application OR 11158 for withdrawal of the subject lands, among others, from all forms of appropriation under the public land laws including the mining laws, but not from leasing under the mineral leasing laws. The application for withdrawal was noted on the records on August 27, 1973. A letter dated August 23, 1974, listing additional lands was received on August 27, 1974, and noted on the records on August 29, 1974. Notice of the proposed withdrawal and reservation was published in 40 F.R. 19501 (May 5, 1975). The proposed withdrawal and reservation of the lands, was for the purpose of a recreational area and roadside and streamside management zone.

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1/ Appellants are William J. Smith, Sr., Emma R. Smith, David L. Smith, William J. Smith, Jr., Joye (a/k/a Jaye) E. Smith, Keith L. Smith, Aiden F. Smith, Milo G. Smith, and Elnora A. Smith.

2/ OR 17438 through OR 17441, OR 17443, OR 17445 through OR 17449, and OR 17451 involve the following placer mining claims: Blue Mountain Nos. 14, 15, 17, 21, 22, 23, 24, 25 and 27. These claims are situated in sections 34, 35 and 36, T. 7 S., R. 35 1/2 E.; sections 27, 31, 32, 33 and 34, T. 7 S., R. 36 E.; and section 2, T. 8 S., R. 36 E., W.M., Oregon. OR 17442, OR 17444 and OR 17450 are Blue Mountain Placer Nos. 18, 20 and 26, situated in E 1/2 SE 1/4 sec. 34, W 1/2 SW 1/4, sec. 35, T. 7 S., R. 35 1/2 E.; N 1/2 NE 1/4, sec. 31, N 1/2 NW 1/4, sec. 32, and N 1/2 NE 1/4, sec. 33, N 1/2 NW 1/4, sec. 34, T. 7 S., R. 36 E., W.M., Oregon.

Claimants, by their attorneys, contend the BLM decision should be overruled for several reasons:

1. No Withdrawal has been made upon captioned properties.
2. "Decision" is based upon proposed withdrawal.
3. Notice of proposed withdrawal, as set forth in Federal Register Volume 40, No. 87, Monday, May 5, 1975, sets forth provision for objections, investigation, negotiations and hearings. No such investigation, negotiations and/or hearings were conducted or pursued to the objections filed by Emma R. Smith, et al, by letter of May 30, 1975, directed to and receipted for by Harold A. Berends, Chief, Branch of Lands and Mineral Operations, Bureau of Land Management, Department of Interior, P. O. Box 2965 (729 N.E. Oregon Street), Portland, Oregon 97208.
4. The letter of May 30, 1975, requested a right of hearing, which has not been granted.
5. The "decision" is void by excessive lapse of time without followup on behalf of the U.S. Government.
6. The "decision" is void by failure to determine the property to be withdrawn due to excessive lapse of time.
7. The "decision" is void because the U.S. Government lacks the authority to declare the mining claims void on basis of withdrawal where no withdrawal has been made.
8. Each of the several reasons set forth in letter of May 30, 1975 \* \* \*.
9. The claims of Emma R. Smith, et al, have filing priority to the proposed withdrawal.
10. The reason that the U.S. Forest Service has conducted and carried out a continual course of torment and harassment inflicted upon William J. Smith, Sr., et al, and the employees and agents of the mining operation.

Claimants' Statement of Reasons, specifically points one, two, seven and nine, may be answered by an explanation of the effect of a proposed withdrawal and a withdrawal of public lands.

[1] The filing of an application for withdrawal of public lands by a federal agency segregates the lands from location, sale, selection, entry, lease or other forms of disposal under the public land laws, including mining to the extent that the withdrawal or reservation, if effected, would prevent such forms of disposal. Segregation of the lands becomes effective on the date the proposed withdrawal is noted in the tract books or on the official plats maintained in the proper office. 43 CFR 2091.2-5; 43 CFR 2351.1 to 2351.6. According to the records of the Oregon State Office, BLM, all the lands in question here were segregated either on August 27, 1973, or August 27, 1974. As we have seen, appellants located their claims between October 16, 1974, and October 28, 1974.

Mining claims are properly declared null and void ab initio where they are located on land, which on the date of location, was included in an application for withdrawal (a proposed withdrawal) which previously had been noted on public land records. Jack D. Canon, 30 IBLA 112 (1977); John Boyd Parsons, 22 IBLA 328 (1975). Thus rejection of appellants' claims was correct as they are located on lands closed to entry under the mining laws at the time of location.

Though a withdrawal of the lands had not been completed by the time the BLM issued a decision, the lands remain closed to entry until final action on the application for withdrawal or reservation has been taken. 43 CFR 2091.2-5. 3/

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3/ We observe that the Federal Land Policy and Management Act of 1976, P.L. 94-579, 90 Stat. 2743, 43 U.S.C. §§ 1701 et seq., October 21, 1976, specifies a new procedure governing withdrawals. Section 204(b) of the Act, 90 Stat. 2751-2755, 43 U.S.C. § 1714, provides that on and after the date of the Act the Secretary of the Interior may make, extend, modify or revoke withdrawals only in accordance with the provisions and limitations of this section. Notice of new applications for withdrawal and a statement as to the extent of segregation while the application is being considered must be published in the Federal Register. Upon publication, the land will become segregated from operation of the public land laws to the extent specified in the notice. The segregative effect of an application shall terminate upon rejection of the application, withdrawal of the land by the Secretary, or at the expiration of 2 years from the date of notice. Under subparagraph (g) all applications for withdrawal pending on the date of the Act shall be processed and adjudicated to conclusion within 15 years from the date of the Act. The segregative effect of any such pending applications not so processed shall terminate on that date.

[2] The notice of proposed withdrawal, 40 F.R. 19501 (1975), invited the submission of written comments, suggestions, or objections in connection with the proposed withdrawal. The notice of proposed withdrawal mentioned a public hearing may be held, if "circumstances warrant it." Additionally, the notice mentioned that BLM "will undertake such investigations as are necessary" as to demand for the lands, and such negotiations with the applicant agency to minimize the area withdrawn.

Appellants complain no such investigations or negotiations took place, nor were hearings held pursuant to the objections filed by Emma R. Smith et al., by letter of May 30, 1975. These further steps, whether pursued or not, do not modify the segregative effect of the application for a withdrawal filed and noted, as set out above.

[3] Appellants complain in points five and six of their Statement of Reasons that the BLM decision should be void because of excessive lapse of time since the time of the proposed withdrawal or for "failure to determine the property to be withdrawn."

The doctrine of laches is applicable to the government in only very limited circumstances. Roberts v. Morton, 549 F.2d 158, 10th Cir. 1977. Where public land has been closed to mineral location by a proposed withdrawal prior to a later mineral location, the government will not be barred by lapse of time from completing the withdrawal. The fact that a withdrawal has been in effect for an extended period of time does not vitiate its effect. Serafina Anelon, 22 IBLA 104 (1975); United States v. Consolidated Mines & Smelting Co., Ltd., 455 F.2d 432, 442-46 (9th Cir. 1971).

[4] Appellants wish to incorporate as part of their appeal, a letter dated May 30, 1975. This letter was originally sent to Harold A. Berends, Chief, Branch of Lands and Mineral Operations, BLM, Portland, Oregon. This letter discusses the merits of the withdrawal both in terms of the mining character of the land as well as the environmental aspects of allowing mining in the proposed withdrawal area.

When an agency makes an application for withdrawal of land, the land is segregated from mineral entry when the proposed withdrawal is noted on public land records. Jack D. Canon, supra; John Boyd Parsons, supra. Once the segregation of the land from mineral entry has taken place, an objection to the merits of the withdrawal will not vitiate the effect of the withdrawal as a bar to the appropriation of the land. Serafina Anelon, supra; Consolidated Mines & Smelting Co., Ltd., A-27019 (June 28, 1954).

Reasons 9 and 10, supra, are mere unsupported allegations. If any of the claims were properly located prior to the notation of the records, they would be unaffected by the request for withdrawal. We cannot see how the alleged harassment would vitiate the prior segregation of the land even if it were true.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Martin Ritvo  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Joseph W. Goss  
Administrative Judge

